IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1378 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TAX & TILES ENGINEERING

Versus

CHANDRIKABEN KANTILAL MADHAKIYA

Appearance:

MR BHARAT J SHELAT for Petitioners

MR SHIRISH JOSHI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. Appellants-original defendants filed this appeal against judgment and decree dated July 31, 1979, passed by learned Judge, City Civil Court, Court No.6, Ahmedabad, in Civil Suit no.3956 of 1975, by which, learned Judge decreed the suit filed by the respondent-plaintiff for Rs.10,000/- with 6% interest from the date of suit till recovery, and costs of the suit, to be recovered from the defendants.

2. The facts in brief are as under: Appellant No.2 is the sole proprietor of appellant No.1-firm. As appellant No.2 was in need of money, the respondent had advanced loan of Rs.10,000/- to the appellants on various

dates i.e. Rs.2000/- on January 1, 1974, Rs.5000/- on January 15, 1974 and Rs.3,000 on March 1, 1974. Appellant No.2 had also paid interest on the said amount upto September 30, 1974. As promised by the appellants, the said amount was not repaid and, therefore, a registered notice was issued by the respondent on August 25, 1975. However, appellant No.2 gave evasive replies and, therefore, the respondent filed Civil Suit No.3956 of 1975 in the City Civil Court, Ahmedabad, praying for a decree of Rs.11,500/- consisting of Rs.10,000/- as principal amount and Rs.1480/- as interest from October 1, 1974 upto the date of filing of suit.

3. The suit was resisted by the appellants by filing their replies at Exh.9 and Exh.58, contending inter alia that the appellants had not taken loan as contended by the respondent and had also not paid interest upto September 30, 1974 on the said amount of loan. It was further averred that promissory note was inadmissible in evidence and it was not true that it was executed by way of collateral security. It was further contended that the father of the respondent had called appellant No.2 and had taken his signatures on three blank papers without stamps duly affixed on it. It was further contended that bogus evidence was created by the respondent in the nature of promissory note and, in fact, no loan was advanced and, therefore, the suit be dismissed with costs.

4. On the aforesaid rival pleadings of the parties, the learned Trial Judge framed issues at Exh.32. Learned Trial Judge, after appreciating oral as well as documentary evidence led by the parties, concluded that the respondent had proved that he advanced loan of Rs.10,000/- to the appellants and it was agreed between the parties that interest at the rate of 12% per annum was payable on the said amount of loan. Learned Trial Judge has further concluded that promissory note executed by the appellants was legal and admissible in evidence. Learned Trial Judge has further held that the appellants had failed to prove that promissory note was forged and got up. On the basis of abovereferred to conclusions, learned Trial Judge decreed the plaintiff's suit, which has given rise to filing of this appeal by the appellants.

5. Learned counsel for the appellants has taken me through the entire record and proceedings of the trial court, and submitted that learned Trial Judge has erred in placing reliance on the promissory note, which was inadmissible in evidence. In my view, the submission of

learned counsel for the appellants is meritless and deserves to be rejected. Learned Trial Judge, after relying upon the decision of the Supreme Court in the case of the Special Land Acquisition Officer, Bangalore vs. T. Adinarayan Setty, reported in AIR 1954 Supreme Court 429, had held that promissory note was admissible in evidence and the appellants had not acted as per the terms of the promissory note and, therefore, the respondent was entitled to bring the suit on the basis of promissory note executed by the appellants. Apart from promissory note, the respondent had produced books of account which were kept and maintained in the regular course of business, which indicated that loan of Rs.10,000/- was advanced to the appellants on three occasions by the respondent. The reason given by learned Trial Judge, in my view, is cogent and convincing and based upon the provisions of law and appreciation of evidence. Even appellant no.2 had admitted in his evidence that Exh.39 dated 4.7.1975, bore his signature. Learned Trial Judge disbelieved version of appellant No.2 that his signature was obtained on blank papers in view of admission on the part of appellant No.2 that Exh.39 bore his signature. Learned Trial Judge had correctly appreciated oral as well as documentary evidence and no error has been pointed out by learned counsel for the appellants. Learned Trial Judge was within his right to draw adverse inference as appellants had deliberately kept back books of account of 1974, because production of those account books was likely to prejudice the version of the appellants. The awarding of interest on the amount of loan is also found to be legal and no interference is called for to set aside interest granted at the rate of 6% per annum. The Trial Judge has correctly appreciated the evidence of the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. Under the circumstances, I am of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned decree in this appeal.

6. For the foregoing reasons, the appeal fails and is dismissed with no order as to costs.

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(swamy)